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NIKKO MATERIALS USA, INC. d/b/a GOULD
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

NIKKO MATERIALS USA, INC., an
Arizona corporation, d/b/a GOULD
ELECTRONICS, INC.,

Plaintiff,

v.

R.E. SERVICE CO., INC., a California
corporation,

Defendant.

CASE NO. CV 03-02549 SBA (JL)

**~~[PROPOSED]~~ ORDER SUSTAINING
NIKKO'S OBJECTIONS TO
DECLARATION OF MARK FRATER IN
SUPPORT OF R.E. SERVICE CO. INC.'S
OPPOSITION TO NIKKO'S MOTION
FOR AN EXCEPTIONAL CASE AND
ATTORNEY FEES**

Trial Date: March 28, 2005
Courtroom: 3

The Honorable Sandra Brown Armstrong

1 This matter came before the Court on Nikko's objections to Declaration Of Mark Frater In
2 Support Of R.E. Service Co. Inc.'s Opposition To Nikko's Motion For An Exceptional Case And
3 Attorney Fees ("Frater Decl."), and argument based thereon.

4 The Court, having considered the pleadings and papers on file, **HEREBY ORDERS** that
5 Nikko's objections are **SUSTAINED** as follows:

6 1. The Frater Declaration is inadmissible as untimely under Fed. R. Civ. P. 26(e)(2),
7 and thus precluded pursuant to Fed. R. Civ. P. 37(c).

8 2. The Frater Declaration is inadmissible hearsay pursuant to Fed. R. Evid. 802.

9 3. In accordance with these rulings, the Frater Declaration and related arguments
10 made by RES will not be considered in ruling on Nikko's Motion for An Exceptional Case And
11 Attorney Fees.

12
13 **IT IS SO ORDERED.**

14 Dated 1/12/06



The Honorable SAUNDRA BROWN ARMSTRONG
United States District Judge